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Original via FedEx - Copy via electronic mail

May 31, 2019

Mr. Charles Maguire, Director
Water Quality Protection Division (6WQ)
U. S. Environmental Protection Agency
1201 Elm Street
Dallas, Texas 75202

Re: State Certification

Dear Mr. Maguire:

Enclosed, please find the state certification for the following proposed draft National Pollutant Discharge Elimination System (NPDES) permit:

Farmington Electric Utility System (FEUS) - Bluffview Power Plant - NPDES No. NM0031135

If any, comments and conditions are enclosed on separate sheets.

U.S. Environmental Protection Agency (USEPA) proposes to regulate discharges under the above-referenced NPDES Individual Permit. A state Water Quality Certification is required by the federal Clean Water Act (CWA) §401 to reasonably ensure that the action is consistent (will comply with) with state law [New Mexico Water Quality Act, §§ 74-6-1 through 74-6-17, New Mexico Statutes Annotated (NMSA) 1978]; and will be conducted in a manner that will comply with (will not violate) applicable state Water Quality Standards, including the antidegradation policy in Standards for Interstate and Intrastate Surface Waters, New Mexico Water Quality Control Commission, 20.6.4 New Mexico Administrative Code (NMAC); and the statewide Water Quality Management Plan and Continuing Planning Process, including Total Maximum Daily Loads.

Pursuant to state regulations for permit certification in Section 20.6.2.2001 NMAC, USEPA jointly with NMED provided public notice of the draft permit and public comment period on April 27, 2019 that was posted on the NMED web site at <https://www.env.nm.gov/surface-water-quality/public-notices>. NMED's public comment period ended on May 28, 2019. NMED received pertinent comments on the draft permit from the permittee representative as discussed on the enclosed attachments. No other comments were received.

May 31, 2019

Farmington Electric Utility System (FEUS) - Bluffview Power Plant - NPDES No. NM0031135

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Sincerely,

/s/Shelly Lemon

Shelly Lemon, Bureau Chief
Surface Water Quality Bureau

cc: (w/ enclosures)

- Ms. Evelyn Rosborough, USEPA (6WQ-PO) by e-mail
- Mr. Brent Larsen, USEPA (6WQ-PP) by e-mail
- Mr. Isaac Chen, USEPA (6WQ-PP) by e-mail
- Mr. Hank Adair, Director, City of Farmington Electric Utility System, Electric Utility System (FEUS), 101 N. Browning Pkwy by Certified Mail (7017 2400 0000 5585 3391)
- Mr. Britt D. Chesnut, Assistant Dir., Generation, FEUS by e-mail
- Mr. Aaron Daily, Senior Environmental Scientist, FEUS by e-mail

Mr. David Gray, Regional Administrator
Environmental Protection Agency
1201 Elm Street
Dallas, TX 75202

May 31, 2019

STATE CERTIFICATION

RE: Farmington Electric Utility System (FEUS) - Bluffview Power Plant - NPDES No. NM0031135

Dear Mr. Gray:

The New Mexico Environment Department (Department) has examined the application and proposed draft National Pollutant Discharge Elimination System (NPDES) permit above. The permit conditions are necessary to assure compliance with the applicable provisions of the Clean Water Act Sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law. Compliance with the terms and conditions of the permit and this certification will provide reasonable assurance that the permitted activities will be conducted in a manner which will not violate applicable water quality standards and the water quality management plan and will be in compliance with the antidegradation policy.

The State of New Mexico

- ☐ certifies that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law
- ☒ certifies that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law upon inclusion of the following conditions in the permit (see attachments)
- ☐ denies certification for the reasons stated in the attachment
- ☐ waives its right to certify

In order to meet the requirements of State law, including water quality standards and appropriate basin plan as may be amended by the water quality management plan, each of the conditions cited in the draft permit unless otherwise indicated and the State certification shall not be made less stringent (see attachments).

The Department reserves the right to amend or revoke this certification if such action is necessary to ensure compliance with the State's water quality standards and statewide water quality management plan.

Please contact Sarah Holcomb at (505) 827-2798 if you have any questions concerning this certification. Conditions or comments pertaining to this draft permit are attached.

Sincerely,

/s/Shelly Lemon

Shelly Lemon, Bureau Chief
Surface Water Quality Bureau

**State Certification of the Proposed NPDES Draft Permit
Farmington Electric Utility System (FEUS) - Bluffview Power Plant
NPDES No. NM0031135
May 31, 2019**

Conditions of Certification

The following revision (See Condition 1 below) to the Draft Permit is necessary to ensure that discharges allowed under the National Pollutant Discharge Elimination System (NPDES) permit protect State of New Mexico water quality standards (WQS) adopted in accordance with §303 of the Clean Water Act (CWA) and the New Mexico Water Quality Act, New Mexico Statutes Annotated (NMSA) 1978, §§ 74-6-1 to -17. State of New Mexico (State) WQS are published in the document entitled Standards for Interstate and Intrastate Surface Waters, New Mexico Water Quality Control Commission (WQCC), 20.6.4 New Mexico Administrative Code (NMAC) as amended by the WQCC and approved by the United States Environmental Protection Agency (USEPA) on August 11, 2017, amended September 12, 2018.

NPDES regulations at 40 CFR 122.44(d)(1)(i) require that permit *“limitations must control all pollutants or pollutant parameters... which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard....”*

NPDES regulations at 40 CFR § 124.53(e) require that State certification shall include:

(1) Conditions which are necessary to assure compliance with the applicable provisions of CWA sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law;

(2) ...any conditions more stringent than those in the draft permit which the State finds necessary to meet the requirements listed in paragraph (e)(1) of this section. For each more stringent condition, the certifying State agency shall cite the CWA or State law references upon which that condition is based...

(3) A statement of the extent to which each condition of the draft permit can be made less stringent without violating the requirements of State law, including water quality standards...

NMED is providing certification consistent with 40 CFR 124.53(e)(1) and (2) for Condition 1. Each condition of the draft permit and this certification cannot be made less stringent, except as discussed in the statement consistent with 40 CFR 124.53(e)(3) provided in Comment 1 below.

State of New Mexico, Statewide Water Quality Management Plan and Continuing Planning Process (WQMP), approved by the WQCC on May 10, 2011 and USEPA on December 23, 2011 states, among other things, “as the current NPDES permitting authority for NM, EPA Region 6 develops effluent limitations and schedules of compliance in accordance with its Procedures for Implementing NPDES Permits in New Mexico, which is based on applicable federal regulations and guidance.” The current version of the Procedures for implementing NPDES Permits in New Mexico or NMIP prepared by USEPA Region 6 Permits Branch in consultation with the NMED Surface Water Quality Bureau (SWQB) is dated March 15, 2012.

Condition 1 (Floating Solids, Oil and Grease): USEPA must include in the Final Permit an additional narrative provision (condition) that limits effluent Floating Solids, Oil and Grease to ensure compliance with NMWQS 20.6.4.13.B NMAC General Criteria. Excerpts for the NMWQS citation are provided below.

Additional Information/Citations: The permit authorizes discharges to San Juan River in Classified Segment 20.6.4.401 NMAC with designated uses: public water supply, industrial water supply, irrigation, livestock watering, wildlife habitat, primary contact, marginal coldwater aquatic life and warmwater aquatic life.

USEPA's Fact Sheet prepared April 1, 2019 discusses the permit's Technology Based Effluent Limitation (TBEL) from 40 CFR 423.15 that include among other things Daily Maximum and 30-Day Average concentration effluent limitations for Total Suspended Solids (TSS) and Oil & Grease. The Draft Permit includes loading limitations for Oil & Grease and TSS that were calculated from the TBEL concentrations and the permittee's reported highest average production flow. The calculated loading limitations increased in the 2019 Draft Permit because the reported highest flows increased.

NMWQS 20.6.4.13 NMAC (General Criteria) states *"...Surface waters of the state shall be free of any water contaminant in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or unreasonably interfere with the public welfare or the use of property."*

NMWQS 20.6.4.13.B (Floating solids, oil and grease) states *"Surface waters of the state shall be free of oils, scum, grease and other floating materials resulting from other than natural causes that would cause the formation of a visible sheen or visible deposits on the bottom or shoreline, or would damage or impair the normal growth, function or reproduction of human, animal, plant or aquatic life."*

Concerning NMWQS general criteria for Floating Solids, Oil and Grease, the 2012 NMIP states *"The implementation of this standard is a narrative provision to be placed in permits that have a reasonable potential to discharge these substances."* The following is the example narrative provision in the 2012 NMIP:

Surface waters shall be maintained so that oil, grease, or related residue will not produce a visible film of oil or globules of grease on the surface or coat the banks or bottoms of the watercourse; or cause toxicity to man, aquatic life, or terrestrial life.

In addition to the increased loading limitations in the 2019 Draft Permit, the Permittee has reported detections of TSS and Oil & Grease in the effluent on the Discharge Monitoring Reports submitted under the current permit. Narrative provisions (conditions) are required to ensure compliance with NMWQS 20.6.4.13.B as discussed in the 2012 NMIP. The following example permit narrative provision (condition) for the effluent incorporates language from 20.6.4.13.B NMAC:

The effluent shall be maintained so that surface waters of the state shall be free of oils, scum, grease and other floating materials resulting from other than natural causes that would cause the formation of a visible sheen or visible deposits on the bottom or shoreline, or would damage or impair the normal growth, function or reproduction of human, animal, plant or aquatic life.

Comments That Are Not Conditions of Certification

Comment 1 (NMED Response to Permittee Comments and NMED's Request for More Information on Applicability of federal Antibacksliding requirements in USEPA's Response to Comments): Permittee representative comments to both USEPA and NMED received in a letter dated May 8, 2019 by e-mail on May 9, 2019 question a decrease in the 2019 Draft Permit from the current permit in the Total Dissolved Solids (TDS) concentration effluent limitation which was calculated using the loading effluent limitation and the permittee's reported highest average production flow as described in the 2019 Fact Sheet. The 2019 Draft Permit continues the effluent limitation for salt loading to the Colorado River System of less than one ton (<2000 lbs) per day as described in Section A.1.a.ii on Page B-5 of the 2017 Review Water Quality Standards for Salinity Colorado River System (<http://www.coloradoriversalinity.org>).

NMWQS in 20.6.4.54 NMAC (COLORADO RIVER BASIN) states *"For the tributaries of the Colorado river system, the state of New Mexico will cooperate with the Colorado river basin states and the federal government to support and implement the salinity policy and program outlined in the most current "review, water quality standards for salinity, Colorado river system" or equivalent report by the Colorado river salinity control forum...."*

A daily maximum concentration effluent limitation for this type of industrial discharge does not appear required by the Colorado River Salinity Control Forum. In this case, a daily maximum concentration effluent limitation is not based directly on a state standard. Therefore, in this case, the Final Permit can be made less stringent without violating the requirements of State law, including water quality standards, including to the extent of removing the calculated concentration effluent limitation.

However, federal CWA Section 402(o) prohibits backsliding from certain existing effluent limitations. In addressing the Permittee representative's comments on the TDS daily maximum concentration effluent limitation, NMED requests that USEPA discuss the applicability of anti-backsliding requirements per federal regulations in their Response to Comments. Continuing monitoring and reporting for TDS concentration, as is required in other NPDES permits in New Mexico, is at the discretion of USEPA.

Comment 2 (Cooling Tower Maintenance Chemicals): NMED requests USEPA to consider adding additional reporting requirements and/or clarification in the Final Permit in Part I.D.3 Prohibitions regarding planned changes that include cooling tower maintenance chemicals.

The 2019 Draft Permit continues to have Technology Based Effluent Limitations (TBEL) and/or Permit Writer's Best Professional Judgement (BPJ) narrative prohibitions for cooling tower maintenance chemicals for "no detectable amount" except for total chromium or Cr (0.2 mg/L or 200 µg/L) and total zinc or Zn (1.0 mg/L or 1000 µg/L) as described in the Fact Sheet. A line diagram in the Permittee's 2019 renewal application shows and describes a sump for metal cleaning that is not connected to the plant outfall system. The 2019 revised renewal application provided concentration data for total Cr was <0.0015 mg/L (<1.5 µg/L) which is a reduction from 0.0056 mg/L (5.6 µg/L) in the 2013 application.

NMWQS 20.6.4.11.E(2) NMAC (Applicability of Water Quality Standards) states *"The acute aquatic life criteria, as set out in Subsection I, Subsection J... of 20.6.4.900 NMAC, shall be attained at the point of discharge for any discharge to a surface water of the state with a designated aquatic life use."* NMWQS 20.6.4.900.J(1) NMAC do not include use-specific numeric criteria for total Cr. The dissolved hexavalent Cr (CAS Number 18540-29-9) acute aquatic life numeric criteria applicable at the point of discharge is 16 micrograms per Liter (µg/L). Depending upon actual ratio of total Cr to dissolved hexavalent Cr (or Cr VI) in the effluent, if any, a total Cr concentration of 200 µg/L could exceed applicable NMWQS for dissolved hexavalent Cr.

Standard conditions in Part III.D.1.a(2), Reporting Requirements, Planned Changes, Industrial Permits) of the current and 2019 Draft Permit states *"The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permittee facility. Notice is required only when...[t]he alteration or addition could significantly change the nature or increase the quantity of pollutants discharged...."*

Additional reporting requirements and/or clarification is recommended Part I.D.3 Prohibitions of the Final Permit. For example:

If cooling tower maintenance chemicals are proposed to be discharged, then the reporting of planned changes per Part III of the permit must include additional engineering calculations, water pollutant concentrations and/or testing as determined by USEPA in coordination with NMED. Planned changes are to be reported to EPA with copy to NMED per Part III of the permit.